

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ANA LOPEZ DEMETRIO and FRANCISCO
EUGENIO PAZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

SAKUMA BROTHERS FARMS, INC.,

Defendant.

NO. 2:13-cv-01918-MJP

**ORDER GRANTING PLAINTIFFS'
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
REGARDING CERTIFIED
QUESTIONS AND PLAINTIFFS'
MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES**

NOTE ON MOTION CALENDAR:
July 8, 2016 at 2:00 p.m.

WHEREAS, on April 1, 2016, this Court entered an Order Granting Preliminary Approval of Class Action Settlement Regarding Certified Questions (Dkt. #31) (the "Preliminary Approval Order"); and

WHEREAS, individual notice complying with Rule 23 of the Federal Rules of Civil Procedure was sent to the last-known address of each member of the Settlement Class and additional notice procedures outlined in the Motion for Final Approval of Class Action Settlement Regarding Certified Questions have been completed; and

WHEREAS, a fairness hearing on final approval of the settlement was held before the Court on July 8, 2016; and

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1 WHEREAS, the Court, being advised, finds that good cause exists for entry of the
2 below Order; now, therefore,

3 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

4 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
5 the same meaning as set forth in the Stipulation of Settlement and Release Regarding Certified
6 Questions (Dkt. #62) (the "Settlement Agreement") and/or Plaintiffs' Motion for Preliminary
7 Approval Of Class Action Settlement Regarding Certified Questions (Dkt. #60).

8 2. The Court finds that notice to the Settlement Class has been completed in
9 conformity with the Preliminary Approval Order. The Court finds that this notice was the best
10 notice practicable under the circumstances, that it provided due and adequate notice of the
11 proceedings and of the matters set forth therein, and that it fully satisfied all applicable
12 requirements of law and due process.

13 3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court has
14 certified the following Settlement Class: "All migrant and seasonal employees of Sakuma who
15 performed piece-rate fruit harvest work for Sakuma in Washington in 2014 or 2015."

16 4. In connection with this certification, the Court makes the following findings:

17 a. The Settlement Class is so numerous that joinder of all members is
18 impracticable;

19 b. There are questions of law or fact common to the Settlement Class for
20 purposes of determining whether this settlement should be approved;

21 c. Plaintiffs' claims are typical of the claims being resolved through the
22 proposed settlement;

23 d. Plaintiffs are capable of fairly and adequately protecting the interests of
24 the Settlement Class members in connection with the Settlement;

25 e. For purposes of determining whether the Settlement is fair, reasonable
26 and adequate, common questions of law and fact predominate over questions affecting only

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1 individual Settlement Class members. Accordingly, the Settlement Class is sufficiently
2 cohesive to warrant settlement by representation; and

3 f. For purposes of Settlement, certification of the Settlement Class is
4 superior to other available methods for the fair and efficient settlement of the claims of the
5 Settlement Class members.

6 5. The Court has appointed Ana Lopez Demetrio and Francisco Eugenio Paz as
7 representatives of the Settlement Class.

8 6. The Court has appointed Marc Cote and Toby Marshall of Terrell Marshall Law
9 Group PLLC and Daniel Ford of Columbia Legal Services as Class Counsel.

10 7. No objections to the Settlement have been lodged, and no Settlement Class
11 Member has opted out of the Settlement.

12 8. The terms set forth in the Settlement are approved as being fair, adequate, and
13 reasonable in light of the degree of recovery obtained in relation to the risks faced by the
14 Settlement Class in litigating the claims. The Settlement Class is properly certified as part of
15 this Settlement. The relief provided to the Qualified Class Members who performed piecework
16 in 2014 is appropriate as to the individual Qualified Class Members and the Settlement Class as
17 a whole.

18 9. As part of the Settlement, Defendant agreed that Class Counsel are entitled to
19 reasonable attorneys' fees and costs for the work on the certified questions and resolution of the
20 2014 rest break claims pursuant to RCW 49.48.030 but did not agree on the amount of the
21 award.

22 10. This Court has reviewed Plaintiffs' Motion for Award of Attorneys' Fees and
23 Expenses, Defendant's Response, and Plaintiffs' Reply.

24 11. The Court awards \$235,000 in attorneys' fees, \$4,951.89 in litigation expenses,
25 and \$11,747.47 in settlement notice and administration fees and costs to Class Counsel. These
26 attorneys' fees and expenses are fair and reasonable under RCW 49.48.030 based on the

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1 lodestar method. The Court reaches this conclusion after analyzing (1) the number of hours
 2 Class Counsel reasonably expended on the certified-question litigation multiplied by counsel's
 3 reasonable hourly rates; (2) the recovery Class Counsel obtained for Qualified Class Members
 4 who worked in the 2014 season as well as Class Counsel's efforts that caused Sakuma's full
 5 payment for rest breaks in the 2015 season; (3) the diligent and efficient effort utilized by Class
 6 Counsel in litigating the certified questions in this Court and at the Washington Supreme Court;
 7 (4) Class Counsel's substantial experience in wage and hour and complex litigation and the
 8 skill utilized to achieve the successful result in the Washington Supreme Court and in the
 9 Settlement; (5) the hurdles to certifying the Settlement Class and proving liability and damages
 10 at trial before the certified questions were presented to the Washington Supreme Court; (6) the
 11 relationship between the amount of the fee requested and the excellent result obtained for the
 12 Settlement Class; and (7) the reasonableness of the litigation costs and settlement notice and
 13 administration fees and costs incurred by Class Counsel.

14 12. Class Counsel reasonably expended more than 710 hours on the certified-
 15 question litigation in this Court and the Washington Supreme Court, not including hours spent
 16 on the settlement notice and administration process. Class Counsel filed detailed
 17 documentation of the time they spent investigating, litigating, researching legal issues, drafting
 18 several briefs to this Court and the Washington Supreme Court, preparing for oral argument at
 19 the Washington Supreme Court, and negotiating a settlement of the certified-question claims.
 20 Their detailed time records are based on contemporaneous records of hours worked. Class
 21 Counsel exercised billing judgment and made reductions where time arguably could be
 22 considered "unnecessarily duplicative" or could have been more efficiently spent.

23 13. Class Counsel's hourly rates—\$300 for Marc Cote, \$400 for Toby Marshall, and
 24 \$375 for Daniel Ford—are reasonable hourly rates considering these attorneys' "experience,
 25 skill and reputation," *see Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996) (quoting *Schwarz*
 26

1 *v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 908 (9th Cir.1995)), and considering “the
2 prevailing market rates” in this District. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984).

3 14. Applying these reasonable hourly rates to the hours reasonably expended in this
4 litigation, Class Counsel’s lodestar is approximately \$205,615. This lodestar reflects work that
5 was reasonably and necessarily expended on the certified-question claims.

6 15. Plaintiffs seek a modest lodestar multiplier for a total attorney fee award of
7 \$235,000.

8 16. The total amount of reasonable attorneys’ fees and costs incurred on Plaintiffs’
9 fee motion, the issues relating to production of Defendant’s fee records, and the reply brief on
10 the fee motion is approximately \$21,305. The Court finds this amount to be reasonable under
11 the circumstances of this case.

12 17. This Court will not apply a multiplier for the work on the fee motion.
13 Subtracting \$21,305 from \$235,000 results in \$213,695. The total amount of fees incurred by
14 Class Counsel excluding work relating to the fee motion is \$184,310 (\$205,615 minus
15 \$21,305). Thus, with no multiplier applied to the hours worked relating to the fee motion, the
16 requested multiplier is approximately 1.16 (\$213,695 divided by \$184,310).

17 18. Based on the risk Class Counsel faced in litigating the certified questions and
18 the quality of the work they performed, this Court finds a lodestar multiplier of approximately
19 1.16 is appropriate, resulting in a total attorney fee award of \$235,000.

20 19. A lodestar multiplier is appropriate in this case based on the risk factor. *See*
21 *Carlson v. Lake Chelan Cmty. Hosp.*, 116 Wn. App. 718, 742-43, 75 P.3d 533 (2003)
22 (affirming application of 1.5 multiplier to lodestar); *Vizcaino v. Microsoft Corp.*, 290 F.3d
23 1043, 1052-54 (9th Cir. 2002) (approving multiplier of 3.65). “In contingency cases such as
24 those brought under [remedial employment statutes], Washington courts have recognized that
25 the prospect of an upward adjustment is an important tool in encouraging litigation.” *Wash.*
26 *State Commc’n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 221, 293 P.3d 413

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(2013) (“*WashCap*”). Here, Plaintiffs pursued the certified-question claims under a remedial Washington employment statute and regulation concerning rest breaks for agricultural workers. Furthermore, Class Counsel pursued the certified-question claims on a contingency fee basis. Thus, Class Counsel assumed the risk that if they were unsuccessful, they would receive no compensation for their work on the certified questions. At the time Class Counsel decided to take on the rest break pay issues, there was no Washington case that had addressed the issues underlying the certified questions, and only one state, California, had adopted the position Plaintiffs advocated. Thus, this was an issue of first impression in Washington.

20. In addition, a lodestar multiplier is appropriate based on the quality of work performed by Class Counsel. Class Counsel performed high-quality work, resulting in a unanimous Washington Supreme Court opinion on an issue of first impression. Class Counsel’s work resulted in Defendant’s agreement to provide full rest break pay to all 2014 pieceworkers, plus interest, in addition to a change in Defendant’s pay system that ensured all workers would receive full rest break pay beginning in 2015. This was an excellent result for the Class.

21. Defendant also “stipulate[d] and agree[d] that Plaintiffs are also entitled to reasonable . . . costs pursuant to RCW 49.48.030 for their counsel’s work on the certified questions and resolution of the 2014 rest break claims.” Dkt. # 62 at 6. The litigation expenses and settlement notice and administration fees and costs incurred by Class Counsel were reasonable, necessary, and appropriately documented in the declarations filed by Class Counsel. Thus, this Court finds that Class Counsel are entitled to an award for those costs totaling \$4,951.89 for reasonable litigation expenses and \$11,747.47 for reasonable settlement notice and administration fees and costs.

22. The Settlement Agreement is binding on all Settlement Class Members.

23. Pursuant to the terms of the Settlement Agreement, Defendant shall issue payment to each of the Qualified Class Members who performed piecework for Defendant in

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2014 in an amount equal to (1) his or her unpaid rest break wages for the 2014 season, calculated at the worker's regular hourly rate (determined based on the average hourly rate each week from piecework) or minimum wage, whichever is higher, plus (2) prejudgment interest on the full amount of rest break wages owing to each Qualified Class Member who performed piecework in 2014 at 12% per year (from the time wages were due after each pay period until the date of this Order). In the event that any Qualified Class Members fail to cash any award checks within one year of distribution, Sakuma shall disburse such funds to the non-profit organization Catholic Community Services in Skagit County, with a request that any such funds be earmarked for farm worker assistance. The work of Catholic Community Services in Skagit County benefits low-income immigrant workers who may require legal assistance, and their work therefore serves "the objectives of the underlying statutes[] and the interests of the silent class members" *Lane v. Facebook, Inc.*, 696 F.3d 811, 819-20 (9th Cir. 2012) (internal quotation omitted).

24. Pursuant to the terms of the Settlement Agreement, upon final approval by the Court, the Settlement Class, including each Settlement Class Member who has not submitted a timely and valid written request to opt out of the Settlement, releases, to the extent permitted by law, Sakuma Brothers Farms, Inc., from any and all claims for alleged violations of WAC 296-131-020 that arose in 2014 and 2015.

25. Without affecting the finality of this Order, or the judgment to be entered pursuant hereto, in any way, the Court retains jurisdiction over the claims against Defendant for purposes of addressing: (1) any disputes arising from the Settlement Agreement; (2) settlement administration matters; and (3) such post-judgment matters as may be appropriate under the Federal Rules of Civil Procedure.

26. The Clerk shall enter a judgment certifying the Settlement Class, finally approving the Settlement Agreement, and awarding \$235,000 in attorneys' fees, \$4,951.89 in

1 litigation expenses, and \$11,747.47 in settlement notice and administration fees and costs to
2 Class Counsel.

3 IT IS SO ORDERED.

4
5 DATED this 8th day of July, 2016.

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7 

8 Marsha J. Pechman
9 United States District Judge

10 Presented by:

11 TERRELL MARSHALL LAW GROUP PLLC

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